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Articles Noted

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AIR PIRACY

Stephen, *"Going South" — Air Piracy and Unlawful Interference with Air Commerce*, 4 INT'L LAWYER 433 (1970).— The author capably summarizes the dilemma of the spreading hijack menace. Although the emphasis is on analysis rather than remedy, the reader is informed of the basic issues encountered in this area by a review of the history of the hijack phenomenon and a description of the difficulties which delay a workable solution. These difficulties center around the ineffectiveness of handling an international problem with simple domestic remedies. The author points out that the act of hijacking is usually politically inspired or motivated and therefore return of the offenders has not been the practice. Since hijackings normally occur between countries whose political relations are strained or non-existent, international measures are presently forestalled. Mr. Stephen suggests that the only possible answer to the situation is an effective deterrent; concluding that, as it becomes apparent that the problem does not respect political ideology, international agreement may become possible. (WPB)

ELECTIONS

Spafford, *The Electoral System of Canada*, 64 AM. POL. SCI. REV. 168 (1970).— In an attempt to analyze election results in Canada, the author uses regression formulae to identify the major variables that influence the distribution of seats in the Federal House of Commons won by a political party in a general election.

The basic formula of $Si = f(Vi;X_1,...,X_k;u)$ is used to mathematically examine the variables that determine election results. The Formula represents the party's share of seats in the House of Commons as a function of the percentage of the vote the party receives, the unspecified factors which exert systematic influences on the voters, and a measure of uncertainty due to the possibilities of data errors and random disturbances. The author contends that the most important variables are: the percentage of the vote attained by the party, the number of candidates of the same political party and the amount of minor-party candidates (the greater the number of minor-party candidates seeking office means a smaller share of the vote needed by a major-party to attain a given percentage of the seats in the House of Commons).

By the author's own admission, mathematical formulae cannot possibly include all the factors that determine election results, but he views his study as offering evidence of the potentialities of multiple regression analysis in the investigation of electoral systems. (JJA)

ENVIRONMENT — RIVERS

Roberts, *River Basin Authorities: A National Solution to Water Pollution*, 83 HARV. L. REV. 1527 (1970).— The growing concern for environmental protection provides the background for Mr. Roberts' discussion of water pollution abatement. He concludes that enforcement of present standards has been difficult due to the failure to implement statutory provisions (Federal Water Quality Act of 1965 and Clean Water Restoration Act of 1966) and the failure of the federal government to adequately fund existing

clean-up programs. These failures have led other writers to propose numerous reforms which the author analyzes before making his own.

The first suggestion considered is the use of tax incentives (accelerated depreciation and investment credits) to stimulate private sector pollution control investment. The second plan proposes a joint treatment concept which would consolidate the efforts to control pollution by using municipal treatment facilities to handle all industrial wastes. The author characterizes these current reform proposals as simplistic approaches which do not recognize the inherently complex scientific and administrative problems underlying efficient pollution abatement.

Mr. Roberts proposes a program that would replace the present institutional structure and approach to water quality management with autonomous federal interstate river basin authorities. Each authority would be charged with enforcing strict federal standards and imposing severe penalties on violators. The author concludes that this approach would help achieve the economic benefits of an integrated system and guarantee the desired environmental water quality standards. (DSC)

EXPROPRIATION

Eder, *Expropriation: Hickenlooper and Hereafter*, 4 INT'L LAWYER 611 (1970).— The author presents an investor's view of the Hickenlooper Amendment and suggests that the government has a duty to apply sanctions against governments which expropriate or confiscate foreign-owned property. The apparent dichotomy illustrated between the intent of the amendment and the policy of the State and Justice Departments during specific seizures in Latin America dramatize the consequences of not following the mandate of Hickenlooper.

The contention is that not applying sanctions is economically unsound in two respects; first, that seizures without just and timely compensation erode private outside investment, and second, that such seizures also considerably weaken the tax base of the expropriating government. That government operation of industry or utility is less economically efficient than private operation is a necessary tenet to the author's conclusion that neither investors nor expropriating governments are better off when Hickenlooper is ignored. Several examples are offered of industries which once contributed heavily to the tax revenues, but since confiscated and operated by the state, have become dependent on tax subsidy for continued operation.

Although this view of governmental failure to meet what the author considers a "moral" obligation to investors will not end the debate on whether the Hickenlooper Amendment should be applied, the author offers specific cautions and recommendations to lawyers concerned with foreign investment. These observations merit consideration as a practical planning guide for minimizing the risks of expropriation. (TTR)

FOREIGN INVESTMENT — EXTERNAL DEBT

Avramovic, *Latin American External Debt: A Study in Capital Flows and in Term of Borrowing*, 4 J. WORLD TRADE L. 121 (1970).— This discussion of problems that Latin America encountered in the servicing of its external debt for the period 1955-1967 is divided into four parts. The author first considers the public or long-term debt of 19 Latin American countries, and points out that this indebtedness has risen at an annual rate of 11 per cent. The problem is further illustrated by an examination of the growth

of foreign private investment, a study of the annual cost of service on debt, and a study of the annual service on private investment.

The author's discussion of the three concepts of capital flow: gross capital inflow, net capital inflow, and resources transfer, are designed to show the depths of the external debt problem and the relation between debt servicing and use of resources. Forecasted are four major problems which will confront Latin American nations in the years ahead. These include: the future size of the external debt coupled with the problem of debt servicing, the forms of assistance, the terms of assistance, and the direction of international cooperation.

Although circumstances may differ, the lesson from the Latin American experience can offer insight into debt servicing problems for other developing regions. (LSK)

FORENSIC MEDICINE

Caldwell, *The Intersections of Medicine and Law: Bases For Future Collaboration*, 31 OHIO ST. L.J. 224 (1970).— The author, in examining the traditional roles played by the medical and legal professions in relation to our dynamic society, recognizes the necessity for closer collaboration between these two institutions. A substantial affinity is demonstrated between the "constitutional context of well-being" as regarded by the law, and the "human well-being" as regarded by medical science. The author perceptively analyzes both concepts in a thorough and substantiated outline.

The general format illustrates types of contemporary health claims both on national and international levels. Such claims display the exigency for decision-making and "interprofessional cooperation" to reach scientific and rational results.

Joint enterprises are suggested whereby doctors supply the medical and scientific knowledge which the lawyer would utilize in translating such material into legal fact and policy. The medical-legal constituents are deemed to be indispensable partners; both labor for "a common humanity" and the highest level "of life and well-being for the species." (RJD)

FORENSIC MEDICINE — CHROMOSOMES

Baker, Telfer, Richardson & Clark, *Chromosome Errors in Men With Antisocial Behavior*, 214 J. AM. MED. ASS'N 869 (1970).— While biological causes of criminal activity were emphasized in research in the last century, subsequent studies concentrated on the pathologic psychosocial environment. While the complex philosophical and practical issues in this field remain unsolved, recent research has indicated some biological correlation to criminal or antisocial activity. A major field has been the study of chromosomal abnormalities. The authors cytogeneticly screened 876 males in prisons and institutions for the mentally ill or retarded. A total of 23 individuals were found to have chromosomal errors. Of these, the seven with a 47,XYY chromosome pattern and the eight with Klinefelter's Syndrome were compared.

Eight short case histories are presented. In addition, charts detailing the physical data of the two groups, their relative psychosocial features, and the prevalence of sex chromosome errors among the institutionalized males studied are presented. The experimental results indicate that the Klinefelter males averaged three inches less in height than did the XYY males. Testicular atrophy was uniformly present in the Klinefelter males

but was present (unilaterally) in only one XYY male. Of the gross findings, only the height remains a consistent phenotypic sign common to both groups. Both a low IQ and psychosis — manifested in a number of cases by attempted suicide — were also observed.

The authors indicate that rigorous proof of a relationship between chromosomal disorders and antisocial behavior will require wide scale screening of the normal population to provide the necessary data basis for a comparison to specially selected samples. Multideterministic theories of behavior appear to be consistant with the complex interaction of both biological and pathological psychosocial environment to determine antisocial behavior. (JCS)

FORENSIC MEDICINE — COMPENSATION

Brodsky, *Antecedent Sexual Factors Delaying Recovery in Compensation Cases*, 12 J. OF OCCUPATIONAL MEDICINE 299 (1970).— Not all victims of industrial injuries follow a recovery pattern compatable with the trauma or the physical findings. While this phenomenon has been attributed to malingering, laziness, or greed, recent studies have indicated that psychological and social characteristics predispose these patients to this type of disability. The author isolates one social-psychological parameter — antecedent sexual factors — and considers 150 cases of delayed recovery from a compensable industrial injury on this basis.

The study population shared several characteristics: 1) receiving or seeking compensation for a compensable industrial injury, 2) having a disability or symptoms stable and existing for at least one year, and 3) specialists considering either that the patient had no physical illness or that the patient's degree or symptoms of disability, complaint pattern, or appearance, behavior or activity were inconsistent with his symptoms or physical syndrome. In addition, all were approximately forty years old and worked in unskilled or semiskilled occupations.

Medical histories of the subjects indicated that many of the patients had sexual problems of long standing. More than three-fourths of the male subjects reported deficient or abnormal sexual function. Half of the female patients were frigid. Several common factors — among them late onset of heterosexual activity, lack of dating experience, type of employment sought, and similar marital experiences — are mentioned.

The author indicates that patients suffering such a sexual dysfunction may in some cases subconsciously utilize the physical injury as a rationale to avoid sexual activity. While medical treatment is indicated for this condition, the current adversary and litigative aspects of compensation cases restrict the physical and psychological treatment approach that might prove most beneficial in rehabilitating these patients. (JCS)

FORENSIC MEDICINE — DRUGS

Wassermann, *The Law and Pharmaceutical Products*, 4 J. WORLD TRADE L. 52 (1970).— This article provides a general overview of the diverse manners in which pharmaceutical products are regulated in various countries of the world. Although no specific countries were selected to make a comparative study, a few were mentioned with their regulations and laws used as examples.

The author emphasizes how advertising of pharmaceutical products is regulated, noting the distinction between advertising directed to the gen-

eral public and that directed to the medical profession. He also discusses the regulations and laws regarding the distribution of such products, showing that quality control is decreasing because of the enormous amount of products that have to be tested. All the countries covered have this problem. Another problem is that many countries have different classifications for the types of products to be regulated. This results in many products filtering into the world market that have not been tested by any country.

Because of the world market for these products, it is the author's opinion that there is a definite need for international regulation. (KAH)

Whealy, *Drugs and the Criminal Law*, 12 CRIM. L. Q. 254 (1970).— The subject of Mr. Whealy's article is Canadian criminal drug legislation. Specifically, he is concerned with the Narcotic Control Act and Parts III and IV of the Food and Drugs Act, 1953, which he considers to be the major legislation in Canada establishing "the code of behavior relating to drugs in the criminal law." The major premise is that these laws do not prohibit drugs *per se*, but rather the behavior of persons in connection with these drugs.

On the basis of these two Acts, three categroies of drugs are created: "narcotics," "controlled" drugs, and "restricted" drugs. Some of the "controlled" drugs are highly addictive and physically dangerous, such as certain amphetamines ("speed"), although it is not an offense to simply possess them. At the same time, marijuana is classified as a "narcotic" and its possession subjects one to severe penalties.

Offenses under these laws are divided into three basic areas: (1) possession of the substance which involves only "narcotics" and "restricted" drugs; (2) trafficking in drugs, which concern only "narcotics" matters, the other two categories being electively summarized at the initiative of the Crown; (3) importing or exporting a "narcotic."

In the first area there are two types of possession: actual and vicarious. The Canadian courts have required three elements necessary to establish actual possession: knowledge of what the article is; manual handling of that article; and some element of control. It is far more difficult to prove vicarious possession than it is to prove actual possession, and most courts decide on the facts of the particular case.

Another sub-division of the first area of possession is holding for the purpose of trafficking. Here the court must first prove simple possession, and then the intent to traffic. This becomes a bifurcated proceeding.

The big debate raging over these laws concerns the punishment meted out. Under the Narcotic Control Act, importing or exporting a "narcotic" is a distinct offense from trafficking, and carries a penalty ranging from seven years imprisonment to life, a penalty second only to murder, treason, and piracy. Trafficking offenses, however, vary from province to province, the average sentence being several months.

Mr. Whealy concludes that the current trend in Canadian courts appears to be a modest increase in leniency toward simple possessors, but stricter penalties for traffickers. (GSG)

FORENSIC MEDICINE — MENTAL HEALTH

Treffert, *Alternatives to Legislating the Right to Treatment*, 21 (9) HOSP. & COMMUNITY PSYCHIATRY 302 (1970).— The author has set forth four methods — not mutually exclusive — of ensuring the right to treatment of

a mentally ill patient committed to a mental hospital. That the right exists is not in dispute. It was established in *Rouse v. Cameron*, 373 F.2d 451 (D.C. Cir. 1966), where the court stated that a criminal defendant, committed involuntarily to a mental hospital, had a legally enforceable right via habeas corpus to adequate and suitable treatment.

To avoid the problems that would inhere in legislative guidelines designed to ensure the right to treatment, the author suggests that the American Psychiatric Association's standards for psychiatric facilities plus those of the Joint Committee on Accreditation of Hospitals could be used by the courts to define standards of adequate care. Secondly, in order to help the courts to determine adequacy of treatment (as opposed to care), a psychiatrist could be involved in a criminal case at the time of sentencing. This would necessitate a restructuring of the criminal-insanity cases, with the determination of the issue of guilt or innocence made separately from the determination of sanity or insanity and the related issue of imprisonment or hospitalization. It is in this latter proceeding that the author suggests a psychiatrist could be most profitably used.

In addition, the author proposes automatic judicial review in an adversary setting of the progress of a committed patient. In this way the court could judge the significance of the treatment emphasis of the hospital as well as the needs of the patient. Finally, the author would place upon the hospitals the responsibility of deciding how many and what kinds of patients they can properly care for and treat. When that limit is reached, the court would be barred from referring further patients to it.

The use of accreditation standards seems to be a feasible method of updating the treatment and care of patients committed to mental hospitals. The second and third alternatives require a restructuring of criminal procedures which, while they should not be summarily dismissed, have been neither carefully thought out nor convincingly presented. The final alternative presupposes the availability of large amounts of money for mental health, which is an ideal solution of little value unless the state legislatures responsible for mental health and correction can be tuned in to the need. (VLK)

FORENSIC MEDICINE — TORTS

Curran, *Quo Vadis Stare Decisis — or the Death of Precedent Torts*, 283 N. ENG. J. MED. 748 (1970).— In the recent case of *Niederman v. Brodsky*, 436 Pa. 401, 261 A.2d 84 (1970), the Pennsylvania Supreme Court reversed an order dismissing a complaint brought by a pedestrian against a motorist for injuries resulting from fright and shock without physical impact. The case and its implications form the subject matter of this article.

In its decision, the court abandoned the so-called "impact rule" which has been the law in most states, and under which damages were prohibited unless the plaintiff had actually been struck "directly or indirectly with the force propelled intentionally or negligently toward him by the defendant."

The majority opinion, according to the author, adds confusion to the issue, for it cites neither the medical advances, nor textbooks, nor scientific papers to substantiate its claim that medical science has progressed to the point where it can separate the valid cases from the invalid.

In creating a new tort with its attendant problems of proof, the courts may be placing too heavy a burden on the science of the emotions which,

in spite of the court's protestations to the contrary, are still "shrouded in mystery. . . ." (VLK)

INDIVIDUAL RIGHTS — HABEAS CORPUS

Kutner, *World Habeas Corpus: Ombudsman for Mankind*, 24 U. OF MIAMI L. REV. 352 (1970).— The author's proposal for a World Ombudsman is premised upon the need for judicial insurance of individual liberty, integrity, and freedom within the world setting. The enforcement of the individual's various rights would be accomplished by a World Ombudsman. The writer exemplifies his proposed Ombudsman by illustrating the Scandinavian principle in which an individual investigates and reports citizens' claims of arbitrary government treatment. The jurisdiction of the writer's proposed judicial court would be invoked by a World Habeas Corpus petition.

Utilizing the historical developments of the writ of habeas corpus, the author illustrates the significant effect a World Habeas Corpus might have in protecting the rights of individuals. The author additionally emphasizes the importance of such a writ by depicting the inept functioning of the various United Nations committees concerned with human rights. Mr. Kutner asserts that his proposed international court could assimilate existing United Nations committees and consequently render them more functional.

To substantiate the need for a World Ombudsman the author points out acts of tyranny employed by several countries in depriving their citizens of human rights. It is the author's opinion that a World Ombudsman might aid in the elimination of the fortifications of tyranny by shaping new forms for agreement, limiting conflict, and insuring that the law will protect the principles of freedom. (JDS)

INTERNATIONAL ORGANIZATIONS

Lenefsky, *United Nations Security Council Resolution on Security Assurances for Nonnuclear Weapon States*, 3 N.Y.U. J. OF INT'L LAW & POLITICS 56, (1970).— Mr. Lenefsky deals with the Resolution on Security Assurances, June 19, 1968 (a resolution designed to induce nonnuclear states to become members to the Nuclear Non-Proliferation Treaty) and presents an analysis of the Resolution, its current significance, and some of its implication.

The author feels that the Resolution is a statement of intent by the nuclear powers in regard to possible nuclear action by mainland China against that country's neighbors (India and Pakistan, among others). The Resolution is viewed as being of significance only to the nonaligned nonnuclear nations, since the other nonnuclear nations already have protection (NATO, SEATO, CENTO, Warsaw Pact).

Considerable doubt is thrown upon the adequacy of the Resolution by Mr. Lenefsky, as he questions the actual practical value of the forces of the United Nations which are supposed to support the Resolution. He pleads for *de facto* strengthening of the Resolution via increased U.S.-Soviet relationship and agreement upon policy and effective strategy for the U.N. Security Council's military planning staff. This, he feels, will "[e]nhance the credibility of the security system" by strengthening the United Nations' effective methods of enforcing the Resolution. (MIG)

LABOR

Villavel, *Certain Aspects of Mexican Labor Laws Especially as They Affect Foreign Owned Businesses*, 6 CALIF. W. L. REV. 234 (1970).— The author is primarily concerned with Article 123, Division "A" of the Mexican Constitution. Division "A" is the basis of Mexican Congressional Legislation in respect to labor concerning employee-employer relations in private or decentralized enterprises. The article is divided into ten sections, each section being concerned with a different aspect of Mexican labor law as it applies to foreign-owned businesses.

The article describes the minimum wage and health standards permissible under the labor laws. Mexico has been divided into economic zones based on the standard of living in the various zones. Distinctions are also made between skilled and unskilled, farm and city workers. The hours worked per day depend on whether the work is done during the day, during the night, or part during the day and part during the night. Mexican law requires the employer to give the employee one resting day for every six days worked and a paid vacation after each year of service. Social Security is mandatory under Mexican law. The government, the employer, and the employee are obliged to contribute to the worker's insurance premium.

Unions are greatly favored and closely regulated by the Mexican government. An employer must prefer union workers over non-union workers in his hiring practices. Businesses in Mexico are required to have profit sharing plans with their employees.

After presenting an informative background about constitutional aspects of Mexican labor laws, the author discusses the protection of the Mexican worker, by these labor laws, from the competition of foreign labor in Mexico. (RHS)

OCEANS — JURISDICTION

Florsheim, *Territorial Seas — 3,000 Year Old Questions*, 36 J. AIR L. & COMMERCE 73 (1970).— The author first presents an historical prospectus of special rights given to coastal nations. Concepts of territorial seas are detailed from ancient Rhodes, Rome, Scandinavia, England and the United States. Although the "popularly accepted theory" of the cannon-shot rule is disputed, the author concedes the value of this theory in establishing a body of international law on the subject.

The three sea zones: coastal water, territorial water, and the high seas are discussed in addition to a consideration of methods of determining the base lines of territorial zones. Also considered is the jurisdiction which a nation may exercise over each zone. The author further details the concerns of each nation, primarily fishing rights, customs, fiscal laws, and national security.

Although the Hague Codification Conference of 1930 and the Geneva Conventions in 1958 and 1960 attempted to determine the scope of the contiguous or territorial zone, these international gatherings were unsuccessful in arriving at a uniform size for territorial seas. The author contends that the most encouraging development of these meetings came in the 1958 compromise proposal submitted by the United States and Canada. The plan calls for a six mile territorial sea and an additional six mile contiguous zone for fishery control. However, the measure was defeated by a single vote at the 1960 convention. The author concludes that, save for the com-

promise proposal, "there does not seem to be any real chance for settlement in the near future." (JNS)

SOVEREIGNTY

Meyers, *Political Rights in the Canadian Arctic*, 4 INT'L LAWYER 666 (1970).— The author deals with the question of Canadian sovereignty in the Arctic. Although not yet decided, the issue is becoming increasingly relevant in international commerce with the discovery of oil in Alaska and predictions of further oil discoveries in the Arctic area.

Meyers defends Canadian sovereignty of the North with two theories. First, the sector principle wherein a State within the Arctic circle claims territory inside the outer longitudinal meridians of its borders. Secondly, the historical perspective theory based on three events: 1) exploits of early English explorers such as Cabot and Baffin, 2) the 1763 treaty of Paris by which the French ceded what is now Canada to England, and 3) the exploits of Hudson's Bay Company.

The next question arising is the sovereignty of the waters. There are three possible positions: that the waters are high seas; that they are internal waters of Canada itself; or that they are territorial waters. The author believes the waters to be territorial and cites the *Norwegian Fisheries Case*, [1951] I.C.J. 116, to support his position. In either of the three positions the right of "innocent passage" would remain, i.e. United States oil tankers could use the waters unmolested.

In the light of historical facts, treaties, occupation and control, and no challenges to her claim, the author concludes that Canada's title is unquestionable. (GRG)

SPACE — EXPLORATION

Wehringer, *The Moon, Spaceports and Law*, 36 J. AIR L. & COM. 58 (1970).— The author indicates that there have been very few effective measures to define and solve the crucial problems that will arise with the future exploration of the moon and building of orbiting spaceports. He pays particular attention to the weaknesses of The Treaty on Outer Space, which was originally adopted to insure the peaceful and non-military exploration of outer space. For example, the Treaty does not include procedures for interpretation of ambiguities in or settlement of claims. After considering the weaknesses inherent in the Treaty, the author concludes that we must face the reality that the law of outer space and the heavenly bodies, as the international law of earth, will have to be protected by "the force of fear (enforcement) and by the force of greed (mutual interest)" of certain nations and not by resounding statements or noble words. (RIV)